

**Fair Political Practices Commission**  
**Memorandum**

**To:** Chairman Schnur, Commissioners Garrett, Hodson, Montgomery, and Rotunda

**From:** Sukhi Brar, Commission Counsel  
Brian Lau, Commission Counsel  
Hyla Wagner, Senior Commission Counsel  
Scott Hallabrin, General Counsel

**Subject:** Adoption of Regulations 18401.1 and 18435.5 – Slate Mail (Recommendation of the Chairman’s Task Force on the Political Reform Act)

**Date:** January 18, 2011

---

**Proposed Commission Action and Staff Recommendation:** Adopt Regulation 18401.1 setting recordkeeping rules for slate mailer organizations and Regulation 18435.5 improving slate mailer disclaimer requirements.

**Background:** The Chairman’s Task Force on the Political Reform Act has submitted several recommendations for improving slate mailer recordkeeping and disclosures, several of which can be accomplished by regulatory change. In addition, the Commission’s Subcommittee on Internet Political Activity recommended that the same disclaimer requirements that apply to slate mailers sent by traditional mail should apply to slate mailers sent by electronic mail. The proposed slate mailer regulations implement these recommendations.

A “slate mailer” is a mass mailing that supports or opposes a total of four or more candidates or ballot measures. (Section 82048.3.) A “mass mailing” is defined as over 200 hundred substantially similar pieces of mail sent in a calendar month. (Section 82041.5; Regulation 18435.)

A slate mailer organization is any person who, directly or indirectly, does all of the following:

“(1) Is involved in the production of one or more slate mailers and exercises control over the selection of the candidates and measures to be supported or opposed in the slate mailers.

“(2) Receives or is promised payments totaling five hundred dollars (\$500) or more in a calendar year for the production of one or more slate mailers.” (Section 82048.4.)

However, a slate mailer organization does not include a candidate or officeholder or his or her controlled committee; an official committee of any political party; a

legislative caucus committee; or a committee primarily formed to support or oppose a candidate, officeholder, or ballot measure.” (Section 84208.4(b).)

A person or entity that qualifies as a slate mailer organization must file a statement of organization within 10 days after it has received or has been promised \$500 or more for producing one or more slate mailers. (Section 84108.) Thereafter, the organization must file periodic campaign statements as specified in Sections 84218, 84219, and 84220.

No slate mailer organization or committee primarily formed to support or oppose one or more ballot measures shall send a slate mailer unless the mailer contains an appropriate disclosure as specified in Section 84305.5. These requirements include a “Notice to Voters” that the slate mailer is not an official publication of a political party and that those candidates and committees who have paid to appear in the mailer are noted by an asterisk. The organization or committee sending a slate mailer must also disclose its name, street address and city.

### **1. Regulation 18435.5 – Slate Mailer Requirements.**

Proposed Regulation 18435.5 improves five aspects of slate mailer disclosures. First, the regulation clears up confusion that has arisen when a third party pays for a candidate or measure to appear in a slate mailer. Under the slate mailer statute, a candidate or measure that has paid to appear in a slate mailer must have an asterisk by its name. In addition, if a third party pays for a candidate or measure to appear in a slate mailer, an asterisk must also appear by the candidate or measure’s name. (Section 84305.5(a)(4) and (b).) However, this requirement is not expressed as simply as it could be in the statute and there has been some confusion within the regulated community as to whether an asterisk is required when a third party pays for a candidate or measure’s appearance in a slate mailer. Therefore, Regulation 18435.5(a) clearly states that if a third party pays for a candidate or measure to be in a slate mailer at the behest of any candidate or committee, the candidate or measure must be identified with an asterisk.

Second, the Task Force recommends that the disclaimer explaining the meaning of an asterisk next to a candidate or measure’s name should be located on the same page of the mailer where the list of candidates and measures with asterisks is most prominently located, so that the meaning of the asterisk is readily apparent. Regulation 18535.5(b) implements this recommendation.

Third, the Task Force made recommendations to ensure that slate mailer disclaimers are readable. Regulation 18435.5(c) clarifies that the Notice to Voters must appear in a reasonable degree of color contrast between the background and the statement, and must appear on a plain background, not superimposed over an illustration or a patterned background. As to what constitutes adequate color contrast, the regulation includes a safe harbor derived from a Federal Election Commission regulation (11 Code of Federal Regulations 110.11(c)). The safe harbor provides that a disclaimer has

adequate color contrast if it is printed in black text on a white background or if the degree of color contrast between the background and the text of the disclaimer is no less than the color contrast between the background and the largest text used in the communication. This addresses a problem identified by the Task Force's slate mailer group: several slate mailer disclaimers reviewed were difficult to read because the disclaimer message was printed in pink on a red background, or was printed in black on top of a brown picture of an eagle. The regulation will prevent slate mailer organizations from producing mailers with unreadable disclaimers.

Fourth, Regulation 18435.5(d) specifies that the Notice to Voters must appear in the same language in which the slate mailer is written. For example, if a slate mailer is written in Spanish, the Notice to Voters must be in Spanish. This Task Force recommendation ensures that the required Notice to Voters is comprehensible to the audience the mailer is intended to reach. Specifically, the regulation provides that the Notice to Voters must be written in the same language in which "eight words or more" of the slate mailer are written. Staff prefers this standard as more straightforward than requiring the disclaimer to be printed in the same language in which "a substantial portion" or "a majority" of the slate mailer is written.

Fifth, Regulation 18435.5(e) provides that the slate mailer identification and disclaimer requirements of Section 84305.5 apply to slate mailers distributed electronically, in addition to those sent by traditional mail. This paragraph implements a recommendation made both by the Task Force and by the Commission's Subcommittee on Internet Political Activity.

Together with the slate mailer legislative changes recommended by the Task Force, these regulatory changes will help voters understand the slate mailers they receive.

## **2. Regulation 18401.1 – Required Recordkeeping for Slate Mailer Organizations.**

As addressed above, slate mailer organizations are required to report receipts and disbursements for the production of slate mailers under Sections 84218-84220 and to provide required disclosure statements on slate mailers under Section 84305.5. To ensure compliance with both the Act's reporting and disclosure requirements, it is essential that slate mailer organizations maintain adequate records of their receipts and payments, as well as copies of any slate mailers they have sent. Section 84108(a) provides that slate mailer organizations must comply with the recordkeeping requirements of Section 84104. However, Commission rules for maintaining records, found in Regulation 18401, are only applicable to candidates, campaign treasures, and elected officers. Accordingly, staff is proposing Regulation 18401.1 requiring slate mailer organizations to maintain records in a manner comparable to campaign committees.

More specifically, proposed Regulation 18401.1 requires slate mailer organizations to maintain all of the following:

- Detailed accounts, records, bills, and receipts necessary to prepare required campaign statements.
- An original sample of any slate mailer sent by the organization, including basic information relating to the mailer such as the date of the mailing, the number of pieces mailed, and the method of postage or delivery.
- Copies of documents reflecting the receipt of payments or obligations incurred by the organization relating to any slate mailer it has sent such as canceled checks, wire transfers, credit card charge slips, bills, receipts, invoices, statements, and vouchers.

Attachments: 1 – Section 84305.5  
2 – Regulation 18401.1  
3 – Regulation 18435.5